



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

**SPECIAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
VIA EMAIL AND CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

Susan B. Knowles
Union Electric Company d/b/a Ameren Missouri
1901 Chouteau Avenue, MC 1310
St. Louis, Missouri 63103
sknowles@ameren.com

Re: Special Notice Letter for Operable Unit 4 of the Findett Corporation
Superfund Site in St. Charles, Missouri, EPA ID No. MOD006333975

Dear Ms. Knowles:

This letter follows the general notice letter that the U.S. Environmental Protection Agency sent to Union Electric Company d/b/a Ameren Missouri on January 20, 2012 in connection with Operable Unit 4 (OU04) of the Findett Corporation Superfund Site, located in St. Charles, Missouri. In that letter, the EPA notified Ameren of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), 42 U.S.C. § 9607(a), for the cleanup of the Site, including all costs incurred by the EPA in responding to releases at the Site. The EPA is now contacting you in an attempt to resolve Ameren's responsibility at the Site.

Background

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, the EPA identified Ameren as a potentially responsible party (PRP) that contributed hazardous substances to OU04 of the Site. Under the federal Superfund law, Ameren is responsible for the costs of cleaning up OU04 of the Site. The EPA has selected a cleanup approach (formally known as a remedial action) for the Site, which is described in a document called a Record of Decision (ROD) issued by the EPA on June 30, 2021.

Special Notice and Negotiation Moratorium

The EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e) may facilitate a settlement between Ameren and the EPA for implementation of the response action. Under Section 122(e), this letter triggers a 60-day moratorium on certain EPA response activities at the Site. During this 60-day moratorium, the

EPA will not begin response action at the Site. However, the EPA reserves the right to take action at the Site at any time should a significant threat to the human health or the environment arise.

During this 60-day period, Ameren is invited to participate in formal negotiations with the EPA in an effort to reach a settlement to conduct or finance the response action at the Site. The 60-day negotiation period ends 60 days from your receipt of this letter. The 60-day negotiation moratorium will be extended for an additional 60 days if Ameren provides the EPA with a “good faith offer” to conduct or finance the response action and reimburse the EPA for its costs incurred to date. If the EPA determines that your proposal is not a “good faith offer,” you will be notified in writing of the agency’s decision to end the moratorium. If the moratorium is extended for an additional 60 days, negotiations will conclude 120 days from your receipt of this letter. If settlement is reached between the EPA and Ameren within the 120-day negotiation moratorium, the settlement will be embodied in a Consent Decree for Remedial Design/Remedial Action. When approved by the EPA and the U.S. Department of Justice, the Consent Decree will then be lodged in federal court.

If a “good faith offer” is not received within 60 days, or a timely settlement cannot be reached, the EPA may take appropriate action at the Site, which may include either of the following options: (1) the EPA may fund the remedial action and pursue a cost recovery claim under Section 107 of CERCLA, 42 U.S.C. § 9607, against Ameren; or (2) the EPA may issue a Unilateral Administrative Order (UAO) to Ameren under Section 106(a) of CERCLA, 42 U.S.C. § 9606, requiring Ameren to perform the work described in the ROD. If the recipient of a UAO refuses to comply with the UAO, the EPA may pursue civil litigation against the recipient to require compliance.

Good Faith Offer

A proposed Consent Decree is enclosed to assist you in developing a “good faith offer.”¹ As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 60 days if Ameren submits a “good faith offer” to the EPA. A “good faith offer” to conduct or finance the remedial action is a written proposal that demonstrates your qualifications and willingness to perform such work and includes the following elements:

- A statement of Ameren’s willingness and financial ability to implement the requirements of the ROD and proposed Consent Decree and that provides a sufficient basis for further negotiation;
- A demonstration of Ameren’s technical capability to carry out the remedial action, including identification of the firm(s) that may actually conduct the work or a description of the process that will be undertaken to select the firm(s);

¹ This draft Consent Decree is not currently binding on EPA and is subject to revision and approval by EPA and DOJ. It is based on the model RD/RA Consent Decree, which is available at https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=81.

- A statement of Ameren's willingness to reimburse the EPA for costs the agency will incur in overseeing Ameren's implementation of the remedial action;
- A response to the proposed Consent Decree. If Ameren's offer contemplates modifications to the Consent Decree, please make revisions or edits to the Consent Decree and submit a version showing your proposed modifications to it;
- A redline/strikeout version of the draft Consent Decree in Microsoft Word;
- A response to the proposed Statement of Work. If your offer contemplates modifications to the Statement of Work, please make revisions or edits to the Statement of Work and submit a version showing your proposed modifications to it; and
- A redline/strikeout version of the proposed Statement of Work in Microsoft Word.

Demand for Reimbursement of Costs

With this letter, the EPA demands that Ameren reimburse the agency for its costs incurred to date, and encourages Ameren to voluntarily negotiate a consent decree in which Ameren agrees to perform the RD/RA for OU04.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, the EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. The EPA is seeking to recover from Ameren its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA, 42 U.S.C. § 9607. To date, the approximate total response costs identified through August 13, 2021, for OU4 of the Site are \$35,651.56. Under Section 107(a) of CERCLA, the EPA hereby makes a demand for payment from Ameren for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to Ameren. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of Ameren's first contact with the Site up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that Ameren files for protection in a bankruptcy court, Ameren must include the EPA as creditor, because the agency has a potential claim against Ameren. The EPA reserves the right to file a proof of claim or application for reimbursement of administrative expenses.

Administrative Record

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, the EPA has established an Administrative Record containing the documents that serve as the basis for the agency's selection of the appropriate response action for the Site. This Administrative Record will be

located at

<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.docdata&id=0700845> and will be available to the public for inspection and comment. The Administrative Record will also be available for inspection and comment at the Superfund Records Center, U.S. Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

PRP Response and EPA Contact Person

You are encouraged to contact the EPA within 30 days of your receipt of this letter to indicate your willingness to participate in future negotiations concerning this Site. If the EPA does not receive a timely response, the agency will assume that you do not wish to negotiate a resolution of your liabilities in connection with OU04 of the Site, and that you have declined any involvement in performing the response activities.

Your response to this Special Notice Letter and the demand for costs included herein, including written proposals to perform the remedial action selected for OU04 of the Site, should be sent to:

U.S. Environmental Protection Agency, Region 7
Cathie Chiccine
11201 Renner Boulevard
Lenexa, Kansas 6621
(913) 551-7330
chiccine.catherine@epa.gov

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, the EPA urges that you give immediate attention and prompt response to this letter.

In addition, the EPA has notified the Federal Natural Resource Trustee² of its intention to perform or enter into negotiations for the performance of response actions at OU04 of the Site.

If you have any questions regarding the technical aspects of this letter, please contact Clint Sperry, Remedial Project Manager, at (913) 551-7157 or sperry.clint@epa.gov. If you have any other questions regarding this letter, you can contact Cathie Chiccine, Site Attorney, at (913) 551-7917 or chiccine.catherine@epa.gov.

² The Natural Resource Trustees are government agencies that have been given the authority to assess the injury to natural resources caused by the release of hazardous substances and to seek the restoration, replacement, or acquisition of equivalent natural resources. The Federal Natural Resource Trustees include the Departments of Agriculture, Commerce, Defense, Energy, and Interior. In addition, states and tribes are Natural Resource Trustees.

My staff and I look forward to working with you during the coming months.

Sincerely,

MARY
PETERSON

Digitally signed by MARY
PETERSON
Date: 2021.11.09
16:20:46 -06'00'

Mary P. Peterson
Director
Superfund and Emergency Management Division

Enclosures

cc: Rachel Hankey, U.S. Department of Justice (via email only)
Scott Stacey, Missouri Department of Natural Resources (via email only)
Tim Duggan, Missouri Office of the Attorney General (via email only)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
And THE STATE OF MISSOURI,)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	
UNION ELECTRIC COMPANY)	
d/b/a AMEREN MISSOURI,)	
)	
Defendant.)	

REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE

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WHEREAS, the United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Missouri (the “State”), on behalf of the Missouri Department of Natural Resources (MO DNR), filed a complaint in this matter under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”).

WHEREAS, the United States and the State in their complaint seek, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice (“DOJ”) for response actions at Operable Unit 4 (“OU4”) of the Findett/Hayford Bridge Road Groundwater Superfund site in St. Charles, Missouri (“Site”), together with accrued interest; and (2) performance by the defendant of a response action at the Site consistent with the National Contingency Plan, 40 C.F.R. part 300 (“NCP”).

WHEREAS, in accordance with the NCP and section 121(f)(1)(F) of CERCLA, EPA notified the State on June 29, 2021, of negotiations with the potentially responsible party (“PRP”) regarding the implementation of the remedial design and remedial action (“RD/RA”) for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and to be a party to this Consent Decree (“Decree”).

WHEREAS, in accordance with section 122(j)(1) of CERCLA, EPA notified the U.S. Department of the Interior on August 20, 2021, of negotiations with the PRP regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee to participate in the negotiation of this Decree.

WHEREAS, the defendant that has entered into this Decree (“Settling Defendant”) does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

WHEREAS, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, Settling Defendant completed a Remedial Investigation for the Site on May 1, 2019, and a Feasibility Study for the Site on March 2, 2020 in accordance with 40 C.F.R. § 300.430.

WHEREAS, in accordance with section 117 of CERCLA and 40 C.F.R § 300.430(f), EPA published notice of the completion of the Feasibility Study and of the proposed plan for remedial action on February 2, 2021 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting and comments received are available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 7, based the selection of the response action.

WHEREAS, EPA selected a remedial action to be implemented at the Site, which is embodied in a final Record of Decision (“Record of Decision”), executed on June 30, 2021, on which the State had a reasonable opportunity to review and comment and on which the State has

given its concurrence. The Record of Decision includes a summary of responses to the public comments. Notice of the final plan was published in accordance with section 117(b) of CERCLA.

WHEREAS, based on the information currently available, EPA and the State have determined that the Work will be properly and promptly conducted by Settling Defendant if conducted in accordance with this Decree.

WHEREAS, the Parties recognize, and the Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith, that implementation of this Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Decree is fair, reasonable, in the public interest, and consistent with CERCLA.

NOW, THEREFORE, it is hereby **ORDERED** and **DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1367, and 1345, and sections 106, 107 and 113(b) of CERCLA, Mo. Rev. Stat. §§ 260.500 – 260.550, and personal jurisdiction over the Parties. Venue lies in this District under section 113(b) of CERCLA and 28 U.S.C. §§ 1391(b), and 1395(a), because the Site is located in this judicial district. This Court retains jurisdiction over the subject matter of this action and over the Parties for the purpose of resolving disputes arising under this Decree, entering orders modifying this Decree, or effectuating or enforcing compliance with this Decree. Settling Defendant may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

II. PARTIES BOUND

2. This Decree is binding upon the United States and the State and upon Settling Defendant and its successors. Unless the United States otherwise consents, (a) any change in ownership or corporate or other legal status of Settling Defendant, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Settling Defendant's obligations under this Decree. Settling Defendant's responsibilities under this Decree cannot be assigned except under a modification executed in accordance with ¶ 67.

3. In any action to enforce this Decree, Settling Defendant may not raise as a defense the failure of any of its officers, directors, employees, agents, contractors, subcontractors, or any person representing Settling Defendant to take any action necessary to comply with this Decree. Settling Defendant shall provide notice of this Decree to each person representing Settling Defendant with respect to the Site or the Work. Settling Defendant shall provide notice of this Decree to each contractor performing any Work and shall ensure that notice of the Decree is provided to each subcontractor performing any Work.

III. DEFINITIONS

4. Subject to the next sentence, terms used in this Decree that are defined in CERCLA or the regulations promulgated under CERCLA have the meanings assigned to them in CERCLA and the regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Decree, the following definitions apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” or “Decree” means this consent decree, all appendixes attached hereto (listed in Section XVIII), and all deliverables incorporated into the Decree under ¶ [7.6] of the SOW. If there is a conflict between a provision in Sections I through XXIII and a provision in any appendix or deliverable, the provision in Sections I through XXIII controls.

“Day” or “day” means a calendar day. In computing any period under this Decree, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the date upon which the Court’s approval of this Decree is recorded on its docket.

“EPA” means the United States Environmental Protection Agency.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between August 13, 2021 and the Effective Date; and (b) pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendant’s performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 11.a; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in taking action under ¶ 19 (Access to Financial Assurance); (vi) in taking response action described in ¶ 50 because of Settling Defendant’s failure to take emergency action under ¶ [5.4] of the SOW; (vii) in implementing a Work Takeover under ¶ 10; (viii) in implementing community involvement activities including the cost of any technical assistance grant provided under section 117(e) of CERCLA; (ix) in enforcing this Decree, including all costs paid under Section XI (Dispute Resolution) and all litigation costs; and (x) in conducting periodic reviews in accordance with section 121(c) of CERCLA. Future Response Costs also includes all Interest accrued after August 13, 2021 on EPA’s unreimbursed costs (including Past Response Costs) under section 107(a) of CERCLA.

“Including” or “including” means “including but not limited to.”

“Institutional Controls” means Proprietary Controls (*i.e.*, easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office) and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure noninterference with, or ensure the protectiveness of the Remedial Action; (c) provide information intended to modify or guide human behavior at or in connection with the Site; or (d) any combination thereof.

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date of lodging of this Decree, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“MO DNR” shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Paragraph” or “¶” means a portion of this Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States, the State, and Settling Defendant.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States paid in connection with the Site through August 13, 2021, plus all interest on such costs accrued under section 107(a) of CERCLA through such date.

“Performance Standards” means the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the Record of Decision.

“Plaintiffs” means the United States and the State.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, (also known as the Resource Conservation and Recovery Act).

“Record of Decision” means the EPA decision document that memorializes the selection of the remedial action at the Site signed on June 30, 2021, by the Regional Administrator or Regional delegatee, EPA Region 7, and all attachments thereto. The Record of Decision is attached as Appendix A.

“Remedial Action” means the remedial action selected in the Record of Decision.

“Remedial Design” means those activities to be undertaken by Settling Defendant to develop plans and specifications for implementing the Remedial Action as set forth in the SOW.

“Scope of the Remedy” means the scope of the remedy set forth in ¶ [1.3] of the SOW.

“Section” means a portion of this Decree identified by a Roman numeral.

“Settling Defendant” means Union Electric Company d/b/a Ameren Missouri.

“Site” shall mean the property owned by Settling Defendant located on Huster Road in St. Charles, St. Charles County, Missouri. EPA designated the Site as OU4 of the Findett/Hayford Bridge Road Groundwater Superfund site, in that the Site is located approximately 3000 feet north of Elm Road and 3000 feet northeast of 8 Governor Drive, in close proximity to the Findett/Hayford Bridge Road Groundwater Superfund site. The Site is depicted as OU4 on the map attached as Appendix C. The Site does not include OU1, OU2, or OU3 of the Findett/Hayford Bridge Road Groundwater Superfund site.

“Special Account” means the special account, within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA.

“State” means the State of Missouri.

“State Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs, and including any Oversight Charges incurred pursuant to the December 7, 2015 Reimbursement Agreement) that the State pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendant’s performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 11.a; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in taking action under ¶ 19 (Access to Financial Assurance); (vi) in taking response action described in ¶ 50 because of Settling Defendant’s failure to take emergency action under ¶ [5.5] of the SOW; (vii) in implementing a Work Takeover under ¶ 10; (viii) in implementing community involvement activities including the cost of any technical assistance grant provided under section 117(e) of CERCLA; (ix) in enforcing this Decree, including all costs paid under Section XI (Dispute Resolution) and all litigation costs; and (x) in conducting periodic reviews in accordance with section 121(c) of CERCLA.

“Statement of Work” or “SOW” means the document attached as Appendix B, which describes the activities Settling Defendant must perform to implement and maintain the effectiveness of the Remedial Action.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under Section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; and (d) any “hazardous waste” under Section 260.360(11) of Missouri Revised Statutes, Mo. Rev. Stat. § 260.360(11).

“Work” means all obligations of Settling Defendant under Sections V (Performance of the Work) through VIII (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 10.

IV. OBJECTIVES

5. The objectives of the Parties in entering into this Decree are to protect public health, welfare, and the environment through the design, implementation, and maintenance of a response action at the Site by Settling Defendant, to pay response costs of Plaintiffs, and to resolve and settle the claims of Plaintiffs against Settling Defendant as provided in this Decree.

V. PERFORMANCE OF THE WORK

6. Settling Defendant shall finance, develop, implement, operate, maintain, and monitor the effectiveness of the Remedial Action all in accordance with the SOW, any modified SOW and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW or modified SOW.

7. Nothing in this Decree and no EPA approval of any deliverable required under this Decree constitutes a warranty or representation by EPA or the State that completion of the Work will achieve the Performance Standards.

8. Modifications to the Remedial Action and Further Response Actions

a. Nothing in this Decree limits EPA’s authority to modify the Remedial Action or to select further response actions for the Site in accordance with the requirements of CERCLA and the NCP. Nothing in this Decree limits Settling Defendant’s rights, under sections 113(k)(2) or 117 of CERCLA, to comment on any modified or further response actions proposed by EPA.

b. If EPA modifies the Remedial Action in order to achieve or maintain the Performance Standards, or both, or to carry out and maintain the effectiveness of the Remedial Action, and such modification is consistent with the Scope of the Remedy, then Settling Defendant shall implement the modification as provided in ¶ 8.c.

c. Upon receipt of notice from EPA that it has modified the Remedial Action as provided in ¶ 8.b and requesting that Settling Defendant implement the modified Remedial Action, Settling Defendant shall implement the modification, subject to their right to initiate dispute resolution under Section XI within 30 days after receipt of EPA’s notice. Settling Defendant shall modify the SOW, or related work plans, or both in accordance with the Remedial Action modification or, if Settling Defendant invoke dispute resolution, in accordance

with the final resolution of the dispute. The Remedial Action modification, the approved modified SOW, and any related work plans will be deemed to be incorporated into and enforceable under this Decree.

9. **Compliance with Applicable Law.** Nothing in this Decree affects Settling Defendant's obligations to comply with all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the Record of Decision and the SOW. The activities conducted in accordance with this Decree, if approved by EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

10. **Work Takeover**

a. If EPA determines that Settling Defendant (i) has ceased to perform any of the Work required under this Section; (ii) is seriously or repeatedly deficient or late in performing the Work required under this Section; or (iii) is performing the Work required under this Section in a manner that may cause an endangerment to human health or the environment, EPA may issue a notice of Work Takeover to Settling Defendant, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Settling Defendant must remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Settling Defendant does not remedy to EPA's satisfaction the circumstances giving rise to the notice of Work Takeover, EPA may notify Settling Defendant and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XI but shall terminate the Work Takeover if and when: (i) Settling Defendant remedies, to EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (ii) upon the issuance of a final determination under Section XI (Dispute Resolution) that EPA is required to terminate the Work Takeover.

VI. PROPERTY REQUIREMENTS

11. **Agreements Regarding Access and Noninterference**

a. As used in this Section, "Affected Property" means any real property, including the Site, where EPA determines, at any time, that access; land, water, or other resource use restrictions; Institutional Controls; or any combination thereof, are needed to implement the Remedial Action.

b. Settling Defendant is the owner of the Site. Settling Defendant shall use best efforts to secure from the owners of all Affected Property not owned by Settling Defendant an agreement, enforceable by Settling Defendant and by Plaintiffs, requiring such owner to provide Plaintiffs and Settling Defendant, and their respective representatives, contractors, and subcontractors with access at all reasonable times to such owner's property to conduct any activity regarding the Decree, including the following:

- (1) implementing the Work and overseeing compliance with the Decree;
- (2) conducting investigations of contamination at or near the Site;
- (3) assessing the need for, planning, or implementing additional response actions at or near the Site;
- (4) determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree; and
- (5) implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

c. Further, each agreement required under ¶ 11.b must commit the owner to refrain from using its property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the following:

- (1) using contaminated groundwater;
- (2) installing potable water wells within the Site without prior notification to and approval by EPA and the State; and
- (3) constructing new structures on the Site without prior notification to and approval by EPA and the State.

d. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Settling Defendant would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements.

e. Settling Defendant shall provide to EPA and the State a copy of each agreement required under ¶ 11.b. If Settling Defendant cannot accomplish what is required through best efforts in a timely manner, it shall notify EPA, and include a description of the steps taken to achieve the requirements. If the United States deems it appropriate, it may assist Settling Defendant, or take independent action, to obtain such access or use restrictions.

12. Access and Noninterference by Settling Defendant. Settling Defendant shall:

(a) provide Plaintiffs and their representatives, contractors, and subcontractors with access at all reasonable times to the Site to conduct any activity regarding the Decree, including those listed in ¶ 11.b; and (b) refrain from using the Site in any manner that EPA determines will pose an unacceptable risk to human health or to the environment because of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 11.c.

13. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are appropriate, Settling Defendant shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such Institutional Controls.

14. Notice to Successors-in-Title

a. Settling Defendant shall, within 15 days after the Effective Date, submit for EPA approval a notice to be recorded regarding its property at the Site in the appropriate land records. The notice must: (1) include a proper legal description of the property; (2) provide notice to all successors-in-title: (i) that the property is part of, or affected by, the Site; (ii) that EPA has selected a remedy for the Site; and (iii) that potentially responsible parties have entered into a Decree requiring implementation of such remedy; and (3) identify the U.S. District Court in which the Decree was filed, the name and civil action number of this case, and the Effective Date of the Decree. Settling Defendant shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Settling Defendant shall, prior to entering into a contract to Transfer any of its property that is part of the Site, or 60 days prior to a Transfer of such property, whichever is earlier:

- (1) notify the proposed transferee that EPA has selected a remedy regarding the Site, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the Decree (identifying the name and civil action number of this case and the date the Court entered the Decree); and
- (2) notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the notice that it provided to the proposed transferee.

15. Notwithstanding any provision of the Decree, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

VII. FINANCIAL ASSURANCE

16. To ensure completion of the Work required under Section V, Settling Defendant shall secure financial assurance, initially in the amount of \$265,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must: (i) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA; and (ii) be satisfactory to EPA. As of the date of lodging of this Decree, the sample documents can be found under the "Financial Assurance - Settlements" category on the

Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Settling Defendant may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

- a. a surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. an irrevocable letter of credit, payable to EPA or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. a trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
- d. a policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

17. Settling Defendant shall, within 30 days after the Effective Date, seek EPA's approval of the form of Settling Defendant's financial assurance. Within 30 days after such approval, Settling Defendant shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer, to DOJ, and to EPA and the State in accordance with ¶ 65.

18. Settling Defendant shall diligently monitor the adequacy of the financial assurance. If Settling Defendant becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Settling Defendant shall notify EPA of such information within seven days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Settling Defendant of such determination. Settling Defendant shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Settling Defendant, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Settling Defendant shall follow the procedures of ¶ 20 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Defendant's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Decree.

19. Access to Financial Assurance

a. If EPA issues a notice of a Work Takeover under ¶ 10.b, then, in accordance with any applicable financial assurance mechanism, EPA may require that any funds guaranteed be paid in accordance with ¶ 19.d.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Settling Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 19.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 10.b, EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Settling Defendant shall, within 30 days after such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 19 must be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

20. Modification of Amount, Form, or Terms of Financial Assurance. Beginning after the first anniversary of the Effective Date, and no more than once per calendar year, Settling Defendant may submit a request to change the form, terms, or amount of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 17, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Settling Defendant of its decision regarding the request. Settling Defendant may initiate dispute resolution under Section XI regarding EPA's decision within 30 days after receipt of the decision. Settling Defendant may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XI. Settling Defendant shall submit to EPA, within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

21. Release, Cancellation, or Discontinuation of Financial Assurance. Settling Defendant may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ [5.10] of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance,

in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XI.

VIII. INDEMNIFICATION AND INSURANCE

22. Indemnification

a. Plaintiffs do not assume any liability by entering into this Decree or by virtue of any designation of Settling Defendant as EPA's and the State's authorized representatives under section 104(e)(1) of CERCLA. Settling Defendant shall indemnify and save and hold harmless Plaintiffs and their officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Defendant's behalf or under its control, in carrying out activities under this Decree, including any claims arising from any designation of Settling Defendant as EPA's and the State's authorized representative under section 104(e)(1) of CERCLA. Further, Settling Defendant agrees to pay Plaintiffs all costs they incur including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against Plaintiffs based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control in carrying out activities under with this Decree. Plaintiffs may not be held out as parties to any contract entered into by or on behalf of Settling Defendant in carrying out activities under this Decree. Settling Defendant and any such contractor may not be considered an agent of Plaintiffs.

b. Either Plaintiff shall give Settling Defendant notice of any claim for which such Plaintiff plans to seek indemnification in accordance with this ¶ 22, and shall consult with Settling Defendant prior to settling such claim.

23. Settling Defendant covenants not to sue and shall not assert any claim or cause of action against Plaintiffs for damages or reimbursement or for set-off of any payments made or to be made to Plaintiffs, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Settling Defendant shall indemnify and save and hold Plaintiffs harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of work at or relating to the Site, including claims on account of construction delays.

24. **Insurance.** Settling Defendant shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name Plaintiffs as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant under

this Decree. Settling Defendant shall maintain this insurance until the first anniversary after issuance of EPA's Certification of Remedial Action Completion under ¶ [5.8] of the SOW. In addition, for the duration of this Decree, Settling Defendant shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Decree. Prior to commencement of the Work, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Settling Defendant shall ensure that all submittals to EPA under this Paragraph identify the Findett/Huster Road Groundwater Superfund Site, St. Charles, Missouri and the civil action number of this case.

IX. PAYMENTS FOR RESPONSE COSTS

25. Payment by Settling Defendant for Past Response Costs.

a. Within 30 days after the Effective Date, Settling Defendant shall pay EPA, in reimbursement of Past Response Costs in connection with the Site, \$35,651.56. The Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Eastern District of Missouri shall provide to Settling Defendant, in accordance with ¶ 65, instructions for making this payment, including a Consolidated Debt Collection System ("CDCS") reference number. Settling Defendant shall make such payment at <https://www.pay.gov> in accordance with the FLU's instructions, including references to the CDCS Number. Settling Defendant shall send notices of this payment to DOJ and EPA in accordance with ¶ 65. If the payment required under this Paragraph is late, Settling Defendant shall pay, in addition to any stipulated penalties owed under Section XII, an additional amount for Interest accrued from the Effective Date until the date of payment.

26. Payments by Settling Defendant for Future Response Costs

a. **Periodic Bills.** On a periodic basis, EPA will send Settling Defendant a bill for Future Response Costs, including an itemized cost summary listing direct and indirect costs paid by EPA, its contractors, subcontractors, and DOJ. Settling Defendant may initiate a dispute under Section XI regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether EPA has made an arithmetical error; (ii) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Settling Defendant must specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Settling Defendant shall pay the bill, or if it initiates dispute resolution, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Settling Defendant shall pay the contested portion of the bill determined to be owed, if any,

within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendant shall make payment at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site/Spill ID and DJ numbers listed in ¶ 65 and the purpose of the payment. Settling Defendant shall send notices of this payment to DOJ and EPA in accordance with ¶ 65.

c. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶¶ 25 and 26.b in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

d. **Payments by Settling Defendant to State.** Settling Defendant shall pay to the State all State Future Response Costs not inconsistent with the NCP. The State will send Settling Defendant a bill requiring payment that includes an accounting, which includes direct and indirect costs incurred by the State and its contractors and subcontractors, on a quarterly basis. Settling Defendant shall pay the bill, or if it initiates dispute resolution, the uncontested portion of the bill, if any, within 60 days after receipt of the bill. Settling Defendant shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Settling Defendant may initiate a dispute under Section XI regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether the State has made an arithmetical error; (ii) whether the State has included a cost item that is not within the definition of Future Response Costs; or (iii) whether the State has paid excess costs as a direct result of a State action that was inconsistent with a specific provision or provisions of the NCP. Settling Defendant must specify in the Notice of Dispute the contested costs and the basis for the objection. Settling Defendant shall make all payments to the State required by this Paragraph in accordance with ¶ 25.b.

X. FORCE MAJEURE

27. “Force majeure,” for purposes of this Decree, means any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant’s contractors that delays or prevents the performance of any obligation under this Decree despite Settling Defendant’s best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Settling Defendant exercises “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

28. If any event occurs for which Settling Defendant will or may claim a force majeure, Settling Defendant shall notify EPA's Project Coordinator by email. The deadline for the initial notice is 7 days after the date Settling Defendant first knew or should have known that the event would likely delay performance. Settling Defendant shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Settling Defendant knew or should have known. Within 7 days thereafter, Settling Defendant shall send a further notice to EPA and the State that includes: (i) a description of the event and its effect on Settling Defendant's completion of the requirements of the Decree; (ii) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (iii) the proposed extension of time for Settling Defendant to complete the requirements of the Decree; (iv) a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (v) all available proof supporting their claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 27 and whether Settling Defendant has exercised its best efforts under ¶ 27, EPA may, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely or complete notices under this Paragraph.

29. EPA, after a reasonable opportunity for review and comment by the State, will notify Settling Defendant of its determination whether Settling Defendant is entitled to relief under ¶ 27, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Settling Defendant may initiate dispute resolution under Section XI regarding EPA's determination within 15 days after receipt of the determination. In any such proceeding, Settling Defendant has the burden of proving that it is entitled to relief under ¶ 27 and that their proposed extension was or will be warranted under the circumstances.

30. The failure by EPA to timely complete any activity under the Decree or the SOW is not a violation of the Decree, provided, however, that if such failure prevents Settling Defendant from timely completing a requirement of the Decree, Settling Defendant may seek relief under this Section.

XI. DISPUTE RESOLUTION

31. Unless otherwise provided in this Decree, Settling Defendant must use the dispute resolution procedures of this Section to resolve any dispute arising under this Decree. Settling Defendant shall not initiate a dispute challenging the Record of Decision. The United States may enforce any requirement of the Decree that is not the subject of a pending dispute under this Section.

32. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute ("Notice of Dispute") in accordance with ¶ 65. Disputes arising under this Decree must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations may not exceed 20 days after the dispute

arises, unless the parties to the dispute otherwise agree. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Settling Defendant initiates formal dispute resolution under ¶ 33.

33. **Formal Dispute Resolution**

a. **Statements of Position.** Settling Defendant may initiate formal dispute resolution by serving on the Plaintiffs, within 20 days after the conclusion of informal dispute resolution under ¶ 32, an initial Statement of Position regarding the matter in dispute. The Plaintiffs' responsive Statements of Position are due within 20 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 10 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 45 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Superfund & Emergency Management Division, EPA Region 7, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Settling Defendant unless it timely seeks judicial review under ¶ 34.

c. **Compilation of Administrative Record.** EPA shall compile an administrative record regarding the dispute, which must include all statements of position, replies, supplemental statements of position, and the Formal Decision.

34. **Judicial Review**

a. Settling Defendant may obtain judicial review of the Formal Decision by filing, within 20 days after receiving it, a motion with the Court and serving the motion on all Parties. The motion must describe the matter in dispute and the relief requested. The parties to the dispute shall brief the matter in accordance with local court rules.

b. **Review on the Administrative Record.** Judicial review of disputes regarding the following issues must be on the administrative record: (i) the adequacy or appropriateness of deliverables required under the Decree; (ii) the adequacy of the performance of the Remedial Action; (iii) whether a Work Takeover is warranted under ¶ 10; (iv) determinations about financial assurance under Section VII; (v) EPA's selection of modified or further response actions; (vi) any other items requiring EPA approval under the Decree; and (vii) any other disputes that the Court determines should be reviewed on the administrative record. For all of these disputes, Settling Defendant bears the burden of demonstrating that the Formal Decision was arbitrary and capricious or otherwise not in accordance with law.

c. Judicial review of any dispute not governed by ¶ 34.b shall be governed by applicable principles of law.

35. **Escrow Account.** For disputes regarding a Future Response Cost billing, Settling Defendant shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"); (b) remit

to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA, in accordance with ¶ 65, copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Settling Defendant shall cause the escrow agent to pay the amounts due to EPA and the State under ¶ 26, if any, by the deadline for such payment in ¶ 26. Settling Defendant is responsible for any balance due under ¶ 26 after the payment by the escrow agent.

36. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Decree, except as EPA agrees, or as determined by the Court. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 39.

XII. STIPULATED PENALTIES

37. Unless the noncompliance is excused under Section X (Force Majeure), Settling Defendant are liable to the United States and the State, with 90% of each stipulated penalty amount paid to the United States and 10% paid to the State, for the following stipulated penalties:

a. for any failure: (i) to pay any amount due under Section IX; (ii) to establish and maintain financial assurance in accordance with Section VII; (iii) Submission of the Draft and Final RD in accordance with ¶ 4.6 (Final (100%) RD) of the SOW; (iv) Submission of the RA Work Plan in accordance with ¶ 5.2 (RA Work Plan) of the SOW; and (v) Submission of the RA Report in accordance with ¶ 5.8 (Certification of RA Completion) of the SOW:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$1,500
15th through 30th day	\$3,000
31st day and beyond	\$6,000

b. for any failure to submit timely or adequate deliverables required by this Decree other than those specified in ¶ 37.a:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$1,000
15th through 30th day	\$2,000
31st day and beyond	\$3,000

38. **Work Takeover Penalty.** If EPA commences a Work Takeover, Settling Defendant is liable for a stipulated penalty in the amount of \$500,000. This stipulated penalty is in addition to the remedy available to EPA under ¶ 19 (Access to Financial Assurance) to fund the performance of the Work by EPA.

39. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate noncompliances with this Decree. Stipulated penalties accrue regardless of whether Settling Defendant has been notified of its noncompliance, and regardless of whether Settling Defendant has initiated dispute resolution under Section XI, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient under ¶ [7.6] of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency;

b. with respect to a matter that is the subject of dispute resolution under Section XI, during the period, if any, beginning on the 21st day after the later of the date that EPA's Statement of Position is received or the date that Settling Defendant's reply thereto (if any) is received until the date of the Formal Decision under ¶ 33.b; or

c. with respect to a matter that is the subject of judicial review by the Court under ¶ 34, during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

40. **Demand and Payment of Stipulated Penalties.**

a. **Payments to EPA.** EPA may send Settling Defendant a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Settling Defendant may initiate dispute resolution under Section XI within 30 days after receipt of the demand. Settling Defendant shall pay the amount demanded or, if it initiates dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Settling Defendant shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late, and; (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Settling Defendant shall make payment at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site/Spill ID and DJ numbers listed in ¶ 65, and the purpose of the payment. Settling Defendant shall send a notice of this payment to DOJ and EPA, in accordance with ¶ 65. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Settling Defendant under the Decree.

b. **Payments to the State.** Settling Defendant shall make all payments to the State under this Section by forwarding a corporate check, payable to "State of Missouri (St. Louis County)" to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri, 65102-0899, Attention Collections Specialist, Financial Services Section. Checks must identify the name of the site, the location of the site, the EPA identification number for the Site if any,

and the docket number of this Order. Settling Defendant shall forward a copy of the check and transmittal letter to the State Project Coordinator in accordance with ¶ 65.

41. Nothing in this Decree limits the authority of the United States or the State: (a) to seek any remedy otherwise provided by law for Settling Defendant's failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Settling Defendant's noncompliances with this Decree or of the statutes and regulations upon which it is based, including penalties under section 122(l) of CERCLA, provided, however, that the United States may not seek civil penalties under section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Decree, except in the case of a willful noncompliance with this Decree.

42. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Decree.

XIII. COVENANTS BY PLAINTIFFS

43. **Covenants for Settling Defendant.** Subject to ¶ 45, the United States covenants not to sue or to take administrative action against Settling Defendant under sections 106 and 107(a) of CERCLA regarding the Work, Past Response Costs, and Future Response Costs.

44. The covenants under ¶ 43: (a) take effect upon the Effective Date; (b) are conditioned on the satisfactory performance by Settling Defendant of the requirements of this Decree; (c) extend to the successors of Settling Defendant but only to the extent that the alleged liability of the successor of Settling Defendant is based solely on its status as a successor of Settling Defendant; and (d) do not extend to any other person.

45. **General Reservations.** Notwithstanding any other provision of this Decree, the United States reserves, and this Decree is without prejudice to, all rights against Settling Defendant regarding the following:

- a. liability for failure by Settling Defendant to meet a requirement of this Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on Settling Defendant's ownership of the Site when such ownership commences after Settling Defendant's signature of this Decree;
- d. liability based on Settling Defendant's operation of the Site when such operation commences after Settling Defendant's signature of this Decree and does not arise solely from Settling Defendant's performance of the Work;
- e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material

at or in connection with the Site, after signature of this Decree by Settling Defendant, other than as provided in the Record of Decision, under this Decree, or ordered by EPA;

f. liability for additional operable units at the Site or the final response action;

g. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, but that are not covered by ¶ 8.b; and

h. criminal liability.

46. Covenants for Settling Defendant by the State and the State's General Reservation of Rights. In consideration of the actions that Settling Defendant will perform and payments Settling Defendant will make under the terms of this Consent Decree, and except as specifically provided in this Consent Decree, the State covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, and Sections 260.510 and 260.530 of the Missouri Revised Statutes for performance of the Work and for recovery of the State's response and oversight costs from the Effective Date through the completion of the Work. The State's covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of all obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant, and do not extend to any other person. Settling Defendant is not released from liability, if any, and Settling Defendant retains all defenses for any State enforcement actions that the State deems appropriate for matters beyond the scope of this Consent Decree including, but no limited to, the following:

a. penalties or injunctive relief under the Missouri Hazardous Waste Management Law or its implementing regulations, or under other federal or state laws or regulations, except as expressly stated herein;

b. criminal charges;

c. Claims for natural resource damages.

47. Without limiting the foregoing, the parties expressly agree that nothing in this Consent Decree shall:

a. Prevent the State from applying to this Court for further orders or relief if violations of this Consent Decree occur;

b. Preclude the State from seeking equitable or legal relief for violations of any laws or regulations not alleged in the Complaint;

c. Preclude the State from seeking equitable or legal relief for future violations of the Missouri Hazardous Waste Management Law or its implementing regulations.

48. The State further reserves all legal and equitable remedies to address any imminent and substantial danger to the public health or welfare or the environment arising at, or

posed by, the Site, or Settling Defendant's acts, or omissions, whether related to the violations addressed in this Consent Decree or otherwise.

49. Subject to ¶ 43, nothing in this Decree limits any authority of Plaintiffs to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action.

XIV. COVENANTS BY SETTLING DEFENDANT

50. Covenants by Settling Defendant

a. Subject to ¶ 51, Settling Defendant covenants not to sue and shall not assert any claim or cause of action against the United States or the State under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding the Work, past response actions relating to the Site, Past Response Costs, and Future Response Costs.

b. Subject to ¶ 51, Settling Defendant covenants not to seek reimbursement from the Fund through CERCLA or any other law for costs of the Work and past response actions regarding the Site, Past Response Costs, Future Response Costs, State Past Response Costs, and State Future Response Costs.

51. **Settling Defendant's Reservation.** The covenants in ¶ 50 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States or the State to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 45.a through 45.g.

52. **De Micromis Waiver.** Settling Defendant shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials. This waiver does not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued under sections 104(e) or 122(e)(3)(B) of CERCLA or section 3007 of RCRA, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise. This waiver does

not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

53. Settling Defendant agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XV. EFFECT OF SETTLEMENT; CONTRIBUTION

54. The Parties agree and the Court finds that: (a) the complaint filed by the United States in this action is a civil action within the meaning of section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved settlement under which Settling Defendant has, as of the Effective Date, resolved its liability to the United States within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (c) Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Decree. The “matters addressed” in this Decree are the Work, Past Response Costs, Future Response Costs, State Past Response Costs, and State Future Response Costs, provided, however, that if the United States exercises rights under the reservations in ¶¶ 45.a through 45.g, the “matters addressed” in this Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

55. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Decree, notify DOJ and EPA and the State no later than 60 days prior to the initiation of such suit or claim. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Decree, notify DOJ and EPA and the State within 10 days after service of the complaint on Settling Defendant. In addition, Settling Defendant shall notify DOJ and EPA and the State within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

56. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against Settling Defendant by either Plaintiff for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case.

57. Nothing in this Decree diminishes the right of the United States under section 113(f)(2) and (3) of CERCLA to pursue any person not a party to this Decree to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

XVI. RECORDS

58. **Settling Defendant Certification.** Settling Defendant certifies that: (a) it has implemented a litigation hold on documents and electronically stored information relating to the Site, including information relating to its potential liability under CERCLA regarding the Site, since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site; and (b) it has fully complied with any and all EPA and State requests for information under sections 104(e) and 122(e) of CERCLA, and section 3007 of RCRA, and State law.

59. Retention of Records and Information

a. Settling Defendant shall retain, and instruct its contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after the Certification Completion of the Work under SOW ¶ [5.10] (the “Record Retention Period”):

- (1) All records regarding Settling Defendant’s liability under CERCLA regarding the Site;
- (2) All reports, plans, permits, and documents submitted to EPA in accordance with this Decree, including all underlying research and data; and
- (3) All data developed by, or on behalf of, Settling Defendant in the course of performing the Remedial Action.

b. Settling Defendant shall retain all Records regarding the liability of any person under CERCLA regarding the Site during the Record Retention Period.

c. At the end of the Record Retention Period, Settling Defendant shall notify EPA that it has 90 days to request the Settling Defendant’s Records subject to this Section. Settling Defendant shall retain and preserve its Records subject to this Section until 90 days after EPA’s receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

60. Settling Defendant shall provide to EPA and the State, upon request, copies of all Records and information required to be retained under this Section. Settling Defendant shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

61. Privileged and Protected Claims

a. Settling Defendant may assert that all or part of a record requested by Plaintiffs is privileged or protected as provided under federal law, in lieu of providing the record, provided that Settling Defendant complies with ¶ 61.b, and except as provided in ¶ 61.c.

b. If Settling Defendant asserts a claim of privilege or protection, it shall provide Plaintiffs with the following information regarding such record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Settling Defendant shall provide the record to Plaintiffs in redacted form to mask the privileged or protected portion only. Settling Defendant shall retain all records that they claim to be privileged or protected until Plaintiffs have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendant's favor.

c. Settling Defendant shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Settling Defendant is required to create or generate in accordance with this Decree.

62. **Confidential Business Information (CBI) Claims.** Settling Defendant may claim that all or part of a record provided to Plaintiffs under this Section is CBI to the extent permitted by and in accordance with section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Settling Defendant shall segregate and shall clearly identify all records or parts thereof submitted under this Decree for which they claim is CBI by labeling each page or each electronic file "claimed as confidential business information" or "claimed as CBI." Records that Settling Defendant claims to be CBI will be afforded the protection specified in 40 C.F.R. part 2, subpart B. If no CBI claim accompanies records when they are submitted to EPA and the State, or if EPA notifies Settling Defendant that the records are not entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to Settling Defendant.

63. In any proceeding under this Decree, validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA, if relevant to the proceeding, is admissible as evidence, without objection.

64. Notwithstanding any provision of this Decree, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XVII. NOTICES AND SUBMISSIONS

65. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Decree must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Decree, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eesdcopy.enrd@usdoj.gov
Re: DJ # _____

As to EPA: Director, Superfund & Emergency Mgmt. Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, KS 66219
Peterson.mary@epa.gov

and: Clint Sperry
EPA Project Coordinator
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, KS 66219
Sperry.clint@epa.gov
(913) 551-7157

**As to the Regional
Financial Management
Officer:** Erin Ramirez
Regional Finance Officer
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
ramirez.erin@epa.gov

**As to EPA Cincinnati
Finance Center:** EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to the State: Olufeyisayo Ilesanmi
State Project Coordinator
Missouri Department of Natural Resources
Environmental Remediation Program
P.O. Box 176
Jefferson City, Missouri 65102-0176
feyi.ilesanmi@dnr.mo.gov

**As to Settling
Defendant:** Barbara J. Miller
Ameren Project Coordinator
[address]
Bmiller2@ameren.com
[phone]

XVIII. APPENDIXES

66. The following appendixes are attached to and incorporated into this Decree:

“Appendix A” is the Record of Decision.

“Appendix B” is the SOW.

“Appendix C” is the map of the Site.

XIX. MODIFICATIONS TO DECREE

67. Except as provided in ¶ 8 of the Decree and ¶ [7.6] of the SOW (Approval of Deliverables), nonmaterial modifications to Sections I through XXIII and the Appendixes must be in writing and are effective when signed (including electronically signed) by the Parties. Material modifications to Sections I through XXIII and the Appendixes must be in writing, signed (which may include electronically signed) by the Parties, and are effective upon approval by the Court. As to changes to the remedy, a modification to the Decree, including the SOW, to implement an amendment to the Record of Decision that “fundamentally alters the basic features” of the Remedial Action within the meaning of 40 C.F.R. § 300.435(c)(2)(ii) will be considered a material modification.

XX. SIGNATORIES

68. The undersigned representative of the United States, the undersigned representative of the State, the undersigned representative of Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this document.

XXI. PRE-ENTRY PROVISIONS

69. If for any reason the Court should decline to approve this Decree in the form presented, this agreement, except for ¶ 70 and ¶ 71, is voidable at the sole discretion of any Party and its terms may not be used as evidence in any litigation between the Parties.

70. This Decree will be lodged with the Court for at least 30 days for public notice and comment in accordance with section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations that indicate that the Decree is inappropriate, improper, or inadequate.

71. Settling Defendant agrees not oppose or appeal the entry of this Decree.

XXII. INTEGRATION

72. This Decree constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Decree.

XXIII. FINAL JUDGMENT

73. Upon entry of this Decree by the Court, this Decree constitutes a final judgment under Fed. R. Civ. P. 54 and 58 between the Parties.

SO ORDERED this ____ day of _____, 20__.

United States District Judge

Signature Page for CD regarding the Findett/Huster Road Groundwater Superfund Site

FOR THE UNITED STATES OF AMERICA:

Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

Dated

Nathaniel Douglas
Deputy Section Chief
Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

Rachel Hankey
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:**

Leslie Humphrey
Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Blvd.
Lenexa, KS 66219

Catherine Chiccine
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Blvd.
Lenexa, KS 66219

Signature Page for CD regarding the Findett/Huster Road Groundwater Superfund Site

FOR THE STATE OF MISSOURI:

Dated

Timothy P. Duggan
Assistant Attorney General
Missouri Attorney General's Office
221 West High St
Jefferson City, MO 65101

Signature Page for CD regarding the Findett/Huster Road Groundwater Superfund Site

**FOR: UNION ELECTRIC CO. d/b/a AMEREN
MISSOURI**

Dated Name: _____
 Title: _____
 Address: _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: _____
Title: _____
Company: _____
Address: _____

Phone: _____
email: _____

REMEDIAL DESIGN/REMEDIAL ACTION

STATEMENT OF WORK

FINDETT CORPORATION SUPERFUND SITE

OPERABLE UNIT 4

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1. INTRODUCTION

1.1 Purpose of SOW. This SOW sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW

- Section 2 (Community Involvement) sets forth EPA's and Settling Defendant's responsibilities for community involvement.
- Section 3 (Coordination and Supervision) contains the provisions for selecting the Supervising Contractor and Project Coordinators regarding the Work.
- Section 4 (Remedial Design) sets forth the process for developing the Remedial Design, which includes the submission of specified primary deliverables.
- Section 5 (Remedial Action) sets forth requirements regarding the completion of the Remedial Action, including primary deliverables related to completion of the Remedial Action.
- Section 6 (Reporting) sets forth Settling Defendant's reporting obligations.
- Section 7 (Deliverables) describes the contents of the supporting deliverables and the general requirements regarding Settling Defendant's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 8 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the Remedial Action.
- Section 9 (State Participation) addresses State participation.
- Section 10 (References) provides a list of references, including URLs.

1.3 On June 30, 2021, the Findett OU4 (OU4) Record of Decision (ROD) was signed. The remedy addresses groundwater contaminated with volatile organic chemicals (VOCs) at the Ameren Missouri Huster Road Substation (Substation), located at 3800 Huster Road, St. Charles, Missouri, 63301. The Selected Remedy is Groundwater Monitoring, Enhanced In-Situ Bioaugmentation Attenuation (Enhanced Bio) and Groundwater Extraction and Treatment System (GETS), as needed, and Institutional Controls (ICs).

Most of the elements of the Selected Remedy were started as part of four pilot studies conducted between 2014 and 2018. The work performed during the pilot studies has reduced the size of the groundwater plume to a small area within the Substation. All groundwater north of the Substation is below the Safe Drinking Water Act maximum contaminant levels (MCLs) for all site contaminants of concern (COCs). For soil, although subsurface concentrations of some COCs at the Substation were elevated prior to the pilot studies, none of the concentrations detected after completion of the pilot studies poses unacceptable human health risks when compared to the EPA's risk-based Regional Screening Levels (RSLs) for a residential exposure scenario.

The Selected Remedy includes the following:

- Naturally occurring *Dehalococcoides*, an anerobic bacteria capable of reductive dechlorination, along with nutrients to support the bacteria (enhanced bioaugmentation) have been injected downgradient from the Substation's transformer number 2 (Transformer 2), creating an attenuation zone that reduces COCs as groundwater passes through the zone.
- The existing GETS, in operation since 2014, can be placed in stand-by status to allow the enhanced bioaugmentation to continue to reduce the contaminant plume. While in standby status, inspection and maintenance of the GETS may be necessary to keep the system operational.
- Ongoing monitoring will be performed to confirm ongoing degradation and evaluate the need for bioaugmentation. Wells demonstrating compliance with the MCLs for an extended period and no longer needed for monitoring would be removed from monitoring and abandoned in accordance with state requirements. The specific wells designated for this purpose would be identified in a groundwater monitoring plan.
- A remedial action of restarting the GETS, or additional enhanced bioaugmentation, or a combination of the two, must be implemented if the MCL is exceeded for one event for any COC found in groundwater outside of the Substation or there is an increasing Mann-Kendall¹ trend of any COC in groundwater inside the Substation for four consecutive quarters. The GETS and/or enhanced bioaugmentation would continue to be implemented until the groundwater COCs show a declining Mann-Kendall trend for four consecutive quarters.
- ICs in the form of an environmental covenant, or other equivalent proprietary control, will be executed and filed with the Recorder of Deeds Office, prohibiting the installation of potable water wells within or near the contaminant plume and construction of buildings within the Substation without prior notification to and approval by the EPA and the State.
- Engineering controls such as site or area berms and fencing to control exposure pathways. To ensure that public access to OU4 remains restricted, security measures will continue to be taken and documented at OU4, including fencing, locked gates, and restricted access to approved personnel.

The Scope of the Remedy includes the actions described in Part II, Section 19 of the ROD.

- 1.4** The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree ("Decree"), have the meanings assigned to them in CERCLA, in such regulations, or in the Decree, except that the term "Paragraph" or "¶" means a paragraph of the SOW, and the term "Section" means a section of the SOW, unless otherwise stated.

¹ The Mann-Kendall Trend Test is used to analyze data collected over time for consistently increasing or decreasing trends.

2. COMMUNITY INVOLVEMENT

- 2.1 As requested by EPA, Settling Defendant shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with this Section. Such activities must include, if requested, designation of a Community Involvement Coordinator ("CI Coordinator") and implementation of a technical assistance plan.

2.2 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously, EPA developed a Community Involvement Plan ("CIP") for the Site. In accordance with 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) **Settling Defendant's CI Coordinator.** As requested by EPA, Settling Defendant shall, within 15 days, designate and notify EPA of Settling Defendant's CI Coordinator (Settling Defendant's CI Coordinator). Settling Defendant may hire a contractor for this purpose. Settling Defendant's notice must include the name, title, and qualifications of the Settling Defendant's CI Coordinator. Settling Defendant's CI Coordinator shall coordinate his/her activities with EPA's CI Coordinator, provide support regarding EPA's community involvement activities, and, as requested by EPA's CI Coordinator, provide draft responses to the public's inquiries including requests for information or data about the Site. The Settling Defendant's CI Coordinator has the responsibility to ensure that when they communicate with the public, the Settling Defendant protects any "Personally Identifiable Information" ("PII") (e.g. sample results from residential properties) in accordance with "EPA Policy 2151.0: Privacy Policy."
- (c) As requested by EPA, Settling Defendant shall participate in community involvement activities, including participation in: (1) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site (with interpreters present for community members with limited English proficiency); and (2) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification. Settling Defendant's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to: (1) any Community Advisory Groups, (2) any Technical Assistance Grant ("TAG") recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP Settling Defendant's responsibilities for community involvement activities. All community involvement activities conducted by Settling Defendant at EPA's request are subject to EPA's oversight. Upon EPA's request, Settling Defendant shall establish, as early as is feasible, a community information repository at or near the Site, as provided in the CIP, to house one copy of the administrative record.

- (d) **Information for the Community.** As requested by EPA, Settling Defendant shall develop and provide to EPA information about the design and implementation of the remedy including: (1) any validated data from monitoring of impacts to communities as provided in the Community Impact Mitigation Plan under ¶ 7.7(e); (2) results from validated sampling as provided under ¶ 7.7(d)(7); (3) a copy of the Community Impacts Mitigation Plan required under ¶ 7.7(e); (4) schedules prepared under Section 8; (5) dates that Settling Defendant completed each task listed in the schedules; and (6) digital photographs of the Work being performed, together with descriptions of the Work depicted in each photograph, the purpose of the Work, the equipment being used, and the location of the Work. The EPA Project Coordinator may use this information for communication to the public via EPA’s website, social media, or local and mass media. The information provided to EPA should be suitable for sharing with the public and the education levels of the community as indicated in EJ Screen. Translations should be in the dominant language(s) of community members with limited English proficiency.

2.3 Settling Defendant’s Responsibilities for Technical Assistance

- (a) At EPA’s request, Settling Defendant shall arrange for a qualified community group to receive the services of a technical advisor(s) who can: (1) help group members understand Site cleanup issues (specifically, to interpret and comment on Site-related documents developed under this SOW); and (2) share this information with others in the community. The technical advisor(s) will be independent from the Settling Defendant. Settling Defendant’s assistance will be limited to \$50,000, except as provided in ¶ 2.3(d)(3), and will end when EPA issues the Certification of Work Completion under ¶ 5.10. Settling Defendant shall implement this requirement under a Technical Assistance Plan (“TAP”).
- (b) At EPA’s request, Settling Defendant shall cooperate with EPA in soliciting interest from community groups regarding a TAP at the Site. If more than one community group expresses an interest in a TAP, Settling Defendant shall cooperate with EPA in encouraging the groups to submit a single, joint application for a TAP.
- (c) At EPA’s request, Settling Defendant shall, within 30 days, submit a proposed TAP for EPA approval. The TAP must describe the Settling Defendant’s plans for the qualified community group to receive independent technical assistance. The TAP must include the following elements:
- (1) For Settling Defendant to arrange for publication of a notice in local media that received a Letter of Intent (“LOI”) to submit an application for a TAP. The notice should explain how other interested groups may also try to combine efforts with the LOI group or submit their own applications, by a reasonable specified deadline;

- (2) For Settling Defendant to review the application(s) received and determine the eligibility of the community group(s). The proposed TAP must include eligibility criteria as follows:
 - (i) A community group is eligible if it is: (a) comprised of people who are affected by the release or threatened release at the Site; and (b) able to demonstrate its ability to adequately and responsibly manage TAP-related obligations.
 - (ii) A community group is ineligible if it is: (a) a potentially responsible party (PRP) at the Site, represents such a PRP, or receives money or services from a PRP (other than through the TAP); (b) affiliated with a national organization; (c) an academic institution; (d) a political subdivision; (e) a tribal government; (f) a group established or presently sustained by any of the above ineligible entities; or (g) a group in which any of the above ineligible entities is represented;
- (3) For Settling Defendant to notify EPA of determination on eligibility of the applicant group(s) to ensure that the determination is consistent with the SOW before notifying the group(s);
- (4) If more than one community group submits a timely application, for Settling Defendant to review each application and evaluate each application based on the following elements:
 - (i) The extent to which the group is representative of those persons affected by the Site; and
 - (ii) The effectiveness of the group's proposed system for managing TAP-related responsibilities, including its plans for working with its technical advisor and for sharing Site-related information with other members of the community.
- (5) For Settling Defendant to document evaluation of, and selection of, a qualified community group, and to brief EPA regarding evaluation process and choice. EPA may review Settling Defendant's evaluation process to determine whether the process satisfactorily follows the criteria in ¶ 2.3(c)(4). TAP assistance may be awarded to only one qualified group at a time;
- (6) For Settling Defendant to notify all applicant(s) about Settling Defendant's decision;
- (7) For Settling Defendant to designate a person (TAP Coordinator) to be their primary contact with the selected community group;

- (8) A description of Settling Defendant's plans to implement the requirements of ¶ 2.3(d) (Agreement with Selected Community Group); and
 - (9) For Settling Defendant to submit quarterly progress reports regarding the implementation of the TAP.
- (d) Agreement with Selected Community Group
- (1) Settling Defendant shall negotiate an agreement with the selected community group that specifies the duties of Settling Defendant and the community group. The agreement must specify the activities that may be reimbursed under the TAP and the activities that may not be reimbursed under the TAP. The list of allowable activities must be consistent with 40 C.F.R. § 35.4070 (*e.g.*, obtaining the services of an advisor to help the group understand the nature of the environmental and public health hazards at the Site and the various stages of the response action, and communicating Site information to others in the community). The list of non-allowable activities must be consistent with 40 C.F.R. § 35.4075 (*e.g.*, activities related to litigation or political lobbying).
 - (2) The agreement must provide that Settling Defendant's review of the Community Group's recommended choice for Technical Advisor will be limited, consistent with 40 C.F.R. §§ 35.4190 and 35.4195, to criteria such as whether the advisor has relevant knowledge, academic training, and relevant experience as well as the ability to translate technical information into terms the community can understand.
 - (3) The agreement must provide that the Community Group is eligible for additional TAP assistance, if it can demonstrate that it has effectively managed its TAP responsibilities to date, and that at least three of the following 10 factors are satisfied:
 - (i) EPA expects that more than eight years (beginning with the initiation of the RI/FS) will pass before construction completion will be achieved;
 - (ii) EPA requires treatability studies or evaluation of new and innovative technologies;
 - (iii) EPA reopens the Record of Decision;
 - (iv) The public health assessment (or related activities) for the Site indicates the need for further health investigations and/or health-related activities;
 - (v) After Settling Defendant's selection of the Community Group for the TAP, EPA designates additional operable units at the Site;

- (vi) EPA issues an Explanation of Significant Differences for the Record of Decision;
 - (vii) After Settling Defendant's selection of the Community Group, a legislative or regulatory change results in significant new Site information;
 - (viii) Significant public concern about the Site exists, as evidenced, *e.g.*, by relatively large turnout at meetings, the need for multiple meetings, the need for numerous copies of documents to inform community members, etc.;
 - (ix) Any other factor that, in EPA's judgment, indicates that the Site is unusually complex; or
 - (x) A RI/FS costing at least \$2 million was performed at the Site.
- (4) Settling Defendant entitled to retain any unobligated TAP funds upon EPA's Certification of Work Completion under ¶ 5.10.
 - (5) Settling Defendant shall submit a draft of the proposed agreement to EPA for its comments.

3. COORDINATION AND SUPERVISION

3.1 Project Coordinators

- (a) Settling Defendant's Project Coordinator must have sufficient technical expertise to coordinate the Work. Settling Defendant's Project Coordinator may not be an attorney representing Settling Defendant in this matter and may not act as the Supervising Contractor. Settling Defendant's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.
- (b) EPA shall designate and notify the Settling Defendant of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors, and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). This includes the authority to halt the Work and/or to conduct or direct any necessary response action when it is determined that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.
- (c) The State shall designate and notify EPA and the Settling Defendant of its Project Coordinator and Alternate Project Coordinator. The State may designate other

representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the State's Project Coordinator also may participate. Settling Defendant shall notify the State reasonably in advance of any such meetings or inspections.

- (d) Settling Defendant's Project Coordinators shall communicate with EPA's and the State's Project Coordinators at least quarterly.

3.2 Supervising Contractor. Settling Defendant's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with the most recent version of *Quality Systems for Environmental Data and Technology Programs -- Requirements with Guidance for Use* (American National Standard), ANSI/ASQC E4 (Feb. 2014).

3.3 Procedures for Disapproval/Notice to Proceed

- (a) Settling Defendant shall designate, and notify EPA, within 10 days after the Effective Date, of the names, titles, contact information, and qualifications of the Settling Defendant's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.
- (b) EPA shall issue notices of disapproval and/or authorizations to proceed regarding any proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Settling Defendant shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. Settling Defendant may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Settling Defendant's selection.
- (c) EPA may disapprove the proposed Project Coordinator, the Supervising Contractor, or both, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.
- (d) Settling Defendant may change their Project Coordinator and/or Supervising Contractor, or both, by following the procedures of ¶¶ 3.3(a) and 3.3(b).

4. REMEDIAL DESIGN

4.1 Remedial Design Work Plan ("RDWP"). Settling Defendant shall submit a RDWP for EPA approval. The RDWP must include:

- (a) Plans for implementing all Remedial Design activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the Remedial Design;

- (b) A description of the overall management strategy for performing the Remedial Design, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the Remedial Design;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (g) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements; and
- (h) The following supporting deliverables described in ¶ 7.7 (Supporting Deliverables): Health and Safety Plan and Emergency Response Plan.

4.2 Institutional Controls Implementation and Assurance Plan (“ICIAP”). Settling Defendant shall submit a proposed ICIAP for EPA approval. The ICIAP should describe plans to implement, maintain, monitor, and enforce the Institutional Controls (“ICs”) at the Site. The ICIAP shall include plans to commence implementing ICs as early as is feasible, including before EPA approval of the 100% design under ¶ 4.6. The ICIAP also should include procedures for effective and comprehensive review of implemented ICs, procedures for the solicitation of input from affected communities regarding the implementation of ICs, procedures to periodically review and determine if the ICs are having their intended effect, and if not, procedures for the development, approval and implementation of alternative, more effective ICs. Settling Defendant shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). Settling Defendants also shall consider including in the ICIAP the establishment of effective Long-Term Stewardship procedures including those described in EPA Memorandum: *Advanced Monitoring Technologies and Approaches to Support Long-Term Stewardship* (July 20, 2018). The ICIAP must include the following additional requirements:

- (a) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and

- (b) Legal descriptions and survey maps that are prepared according to current American Land Title Association (“ALTA”) Survey guidelines and certified by a licensed surveyor.
- 4.3** Settling Defendant shall communicate regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.
- 4.4 Preliminary (30%) Remedial Design.** Settling Defendant shall submit a Preliminary (30%) Remedial Design for EPA’s comment. The Preliminary Remedial Design must include:
- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);
 - (b) Preliminary drawings and specifications;
 - (c) Descriptions of permit requirements, if applicable;
 - (d) Preliminary Operation and Maintenance (“O&M”) Plan and O&M Manual;
 - (e) A description of how the Remedial Action will be implemented in a manner that minimizes environmental impacts in accordance with EPA’s *Principles for Greener Cleanups* (Aug. 2009);
 - (f) A description of monitoring and control measures to protect human health and the environment, such as air monitoring, and measures to reduce and manage traffic, noise, odors, and dust, during the Remedial Action in accordance with the Community Involvement Handbook pp. 53-66 (text box on p. 55) to minimize community impacts;
 - (g) Any proposed revisions to the Remedial Action Schedule that is set forth in ¶ 8.3 (Remedial Action Schedule); and
 - (h) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 7.7 (Supporting Deliverables): Field Sampling Plan; Quality Assurance Project Plan Site Wide Monitoring Plan; Community Impacts Mitigation Plan, Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; O&M Plan; and O&M Manual.
- 4.5 Pre-Final (95%) Remedial Design.** Settling Defendant shall submit the Pre-final (95%) Remedial Design for EPA’s comment. The Pre-final Remedial Design must be a continuation and expansion of the previous design submittal and must address EPA’s comments regarding the Intermediate Remedial Design. The Pre-final Remedial Design will serve as the approved Final (100%) Remedial Design if EPA approves the Pre-final Remedial Design without comments. The Pre-final Remedial Design must include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's Master Format 2012;
- (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;
- (c) Pre-Final versions of the same elements and deliverables as are required for the Remedial Design;
- (d) A specification for photographic documentation of the Remedial Action; and
- (e) Updates of all supporting deliverables required to accompany the Preliminary (30%) Remedial Design.

4.6 Final (100%) Remedial Design. Settling Defendant shall submit the Final (100%) Remedial Design for EPA approval. The Final Remedial Design must address EPA's comments on the Pre-final Remedial Design and must include final versions of all Pre-final Remedial Design deliverables.

5. REMEDIAL ACTION

5.1 As stated above in Section 1.3, most of the elements of the Selected Remedy were started as part of four pilot studies conducted between 2014 and 2018. The work performed during the pilot studies has reduced the size of the groundwater plume to a small area within the Ameren Missouri Huster Road Substation. The remedy that is currently operating is groundwater monitoring and the injection of Dehalococcoides and/or operation of the GETS. Details of the injection and operation of the GETS is specified in Section 19 of the ROD. An environmental covenant is also stipulated in the ROD, but has not yet been executed or recorded.

5.2 Remedial Action Work Plan ("RAWP"). Settling Defendant shall submit a RAWP for EPA approval that includes:

- (a) A proposed Remedial Action Construction Schedule;
- (b) An updated health and safety plan that covers activities during the Remedial Action; and
- (c) Plans for satisfying permitting requirements, including obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity.

5.3 Permits

- (a) As provided in CERCLA § 121(e), and Section 300.400(e) of the NCP, no permit is required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and

necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

- (b) Settling Defendant may seek relief under the provisions of Section [XI] (Force Majeure) of the Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 5.3(a) and required for the Work, provided that submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.
- (c) Nothing in the Decree or this SOW constitutes a permit issued under any federal or state statute or regulation.

5.4 Emergency Response and Reporting

- (a) **Emergency Action.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Settling Defendant shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 5.4(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report under CERCLA § 103 or Section 304 of the Emergency Planning and Community Right-to-know Act (“EPCRA”), Settling Defendant shall immediately notify the authorized EPA officer orally.
- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations under ¶ 5.4(a) and ¶ 5.4(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA Emergency Response Unit, Region 7 (if neither EPA Project Coordinator is available).
- (d) For any event covered by ¶ 5.4(a) and ¶ 5.4(b), Settling Defendant shall:
 - (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and
 - (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 5.2 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

5.5 Off-Site Shipments

- (a) Settling Defendant may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with CERCLA § 121(d)(3), and 40 C.F.R. § 300.440. Settling Defendant will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Settling Defendant obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) Settling Defendant may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, provide notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Settling Defendant also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Settling Defendant shall provide the notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.
- (c) Settling Defendant may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if in compliance with CERCLA § 121(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Record of Decision. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

- 5.6 Proprietary Controls.** Settling Defendant shall, with respect to any Affected Property that is not owned by Settling Defendant, use best efforts to secure from such owner cooperation in executing and recording, in accordance with the procedures of this ¶ 5.6, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Decree, including those activities listed in ¶ [12.b] of the Decree (Access Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in ¶ [12.c] of the Decree (Restrictions). Any Settling Defendant that is an owner of any Affected Property ("Owner SD") shall, with respect to its Affected Property, execute and record, in accordance with the procedures of this ¶ 5.6, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Decree, including those activities listed in ¶ [12.b] (Access Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in ¶ [12.c] (Property Restrictions).

- (a) **Grantees.** The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, Settling Defendant, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (“UECA”) document granted to persons other than the United States must include a designation that EPA (and/or the State as appropriate) is either an “agency” or a party expressly granted the right of access and the right to enforce the covenants allowing EPA and/or the State to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.
- (b) **Initial Title Evidence.** Settling Defendant shall, within 45 days after the Effective Date:
 - (1) **Record Title Evidence.** Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, the State, the Settling Defendant, or “To Be Determined;” (ii) covers the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, “Prior Encumbrances”); and (v) includes complete, legible copies of such Prior Encumbrances; and
 - (2) **Non-Record Title Evidence.** Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.
- (c) **Release or Subordination of Prior Liens, Claims, and Encumbrances**
 - (1) If any Prior Encumbrance may defeat or adversely affect the rights to be granted by the Proprietary Controls in a manner that could interfere with the remedy or result in unacceptable exposure to Waste Material, Settling Defendant shall consult with EPA regarding the release, subordination, modification, or relocation of such Prior Encumbrance.
- (d) **Update to Title Evidence and Recording of Proprietary Controls**
 - (1) Settling Defendant shall submit to all draft Proprietary Controls and draft instruments addressing Prior Encumbrances, if any, to EPA for review and approval within 180 days after the Effective Date.
 - (2) Upon EPA’s approval of the proposed Proprietary Controls, Settling Defendant shall, within 15 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under ¶ 5.6(b)

(Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Settling Defendant shall secure the immediate recordation of the Proprietary Controls in the appropriate land records. Otherwise, Settling Defendant shall consult with EPA, in accordance with ¶ 5.6(c)(1) regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls.

- (3) If Settling Defendant submitted a title insurance commitment under ¶ 5.6(b)(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, if any, Settling Defendant shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount approved by EPA; (iii) is issued to the United States, Settling Defendant, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (“ALTA”) form or other form approved by EPA.
- (4) Settling Defendant shall, within 300 days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, if any, or such other deadline approved by EPA, provide to the United States and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances, if any, showing the clerk’s recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.
- (e) Settling Defendant shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this Decree.
- (f) Settling Defendant shall not Transfer its Affected Property unless it has executed and recorded all Proprietary Controls and all instruments addressing Prior Encumbrances required by EPA regarding such Affected Property in accordance with this Paragraph.

5.7 Remedial Action Construction Completion

- (a) For purposes of this ¶ 5.6, “Remedial Action Construction” comprises, for any Remedial Action that involves the construction and operation of a system to achieve Performance Standards (for example, groundwater or surface water restoration remedies), the construction of such system and the performance of all activities necessary for the system to function properly and as designed.
- (b) **Inspection of Constructed Remedy.** Settling Defendant shall schedule an inspection to review the construction and operation of the system and to review whether the system is functioning properly and as designed. The inspection must

be attended by Settling Defendant and EPA and/or their representatives. A reinspection must be conducted if requested by EPA.

- (c) **Shakedown Period.** There shall be a shakedown period of up to one year for EPA to review whether the remedy is functioning properly and performing as designed. Settling Defendant shall provide such information as EPA requests for such review.
- (d) **Remedial Action Report.** Following the shakedown period, Settling Defendant shall submit an “Remedial Action Report” requesting EPA’s determination that Remedial Action Construction has been completed. The Remedial Action Report must: (1) include statements by a registered professional engineer and by Settling Defendant’s Project Coordinator that the construction of the system is complete and that the system is functioning properly and as designed; (2) include a demonstration, and supporting documentation, that construction of the system is complete and that the system is functioning properly and as designed; (3) include as-built drawings signed and stamped by a registered professional engineer; (4) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); and (5) be certified in accordance with ¶ 7.5 (Certification).
- (e) If EPA determines that Remedial Action Construction is not complete, EPA shall so notify Settling Defendant. EPA’s notice must include a description of, and schedule for, the activities that Settling Defendant must perform to complete Remedial Action Construction. EPA’s notice may include a schedule for completion of such activities or may require Settling Defendant to submit a proposed schedule for EPA approval. Settling Defendant shall perform all activities described in the EPA notice in accordance with the schedule.
- (f) If EPA determines, based on the initial or any subsequent Remedial Action Report, that Remedial Action Construction is complete, EPA shall so notify Settling Defendant.

5.8 Certification of Remedial Action Completion

- (a) **Monitoring Report.** Following the inspection, Settling Defendant shall submit a Monitoring Report to EPA requesting EPA’s Certification of Remedial Action Completion. The report must: (1) include certifications by a registered professional engineer and by Settling Defendant’s Project Coordinator that the Remedial Action is complete; (2) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (3) contain monitoring data to demonstrate that Performance Standards have been achieved; and (4) be certified in accordance with ¶ 7.5 (Certification).

- (b) If EPA concludes that the Remedial Action is not Complete, EPA shall so notify Settling Defendant. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require Settling Defendant to submit a schedule for EPA approval. Settling Defendant shall perform all activities described in the notice in accordance with the schedule.
- (c) If EPA concludes, based on the initial or any subsequent Monitoring Report requesting Certification of Remedial Action Completion, that the Remedial Action is Complete, EPA shall so certify to Settling Defendant. This certification will constitute the Certification of Remedial Action Completion for purposes of the Decree, including Section [XIV] of the Decree (Covenants by Plaintiffs). Certification of Remedial Action Completion will not affect Settling Defendant's remaining obligations under the Decree.

5.9 Periodic Review Support Plan ("PRSP"). Settling Defendant shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that Settling Defendant shall conduct to support EPA's reviews of whether the Remedial Action is protective of human health and the environment in accordance with CERCLA § 121(c) (also known as "Five-year Reviews"). Settling Defendant shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances.

5.10 Certification of Work Completion

- (a) **Work Completion Inspection.** Settling Defendant shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by Settling Defendant and EPA and/or their representatives.
- (b) **Work Completion Report.** Following the inspection, Settling Defendant shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must: (1) include certifications by a registered professional engineer and by Settling Defendant's Project Coordinator that the Work, including all O&M activities, is complete; and (2) be certified in accordance with ¶ 7.5 (Certification). If the Monitoring Report submitted under ¶ 5.8(a) includes all elements required under this ¶ 5.10(b), then the Monitoring Report suffices to satisfy all requirements under this ¶ 5.10(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify Settling Defendant. EPA's notice must include a description of the activities that Settling Defendant must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require Settling Defendant to submit specifications and a schedule for EPA approval. Settling Defendant shall perform all activities described in the notice or in the EPA-approved specifications and schedule.

- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to Settling Defendant. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections [VI] (Property Requirements), and [XVII] (Records) of the Decree; (3) Institutional Controls obligations as provided in the ICIAP; and (4) reimbursement of EPA's Future Response Costs under Section [IX] (Payments for Response Costs) of the Decree.

6. REPORTING

6.1 Progress Reports. Commencing with the month following lodging of the Decree and until EPA approves the Remedial Action Construction Completion, Settling Defendant shall submit progress reports to EPA on a quarterly basis, or as otherwise requested by EPA. The reports must cover all activities that took place during the prior reporting period, including:

- (a) The actions that have been taken toward achieving compliance with the Decree;
- (b) A summary of all results of sampling, tests, and all other data received or generated by Settling Defendant;
- (c) A description of all deliverables that Settling Defendant submitted to EPA;
- (d) A description of all activities relating to Remedial Action Construction that are scheduled for the next quarter;
- (e) An updated Remedial Action Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that Settling Defendant has proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the Community Involvement Plan ("CIP") during the reporting period and those to be undertaken in the next quarter.

6.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 6.1(d), changes, Settling Defendant shall notify EPA of such change at least seven days before performance of the activity.

7. DELIVERABLES

- 7.1 Applicability.** Settling Defendant shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 7.2 (In Writing) through 7.4 (Technical Specifications) apply to all deliverables. Paragraph 7.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 7.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.
- 7.2 In Writing.** As provided in [¶ 82] of the Decree, all deliverables under this SOW must be in writing unless otherwise specified.
- 7.3 General Requirements for Deliverables.** All deliverables must be submitted by the deadlines in the Remedial Design Schedule or Remedial Action Schedule, as applicable. Settling Defendant shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 7.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Settling Defendant shall also provide EPA with paper copies of such exhibits.
- 7.4 Technical Specifications**
- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable ("EDD") format. EPA Region 7 uses Scribe. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
 - (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format Scribe, and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 ("NAD83") or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee ("FGDC") Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor ("EME"), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
 - (c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
 - (d) Spatial data submitted by Settling Defendant does not, and is not intended to, define the boundaries of the Site.

- 7.5 Certification.** All deliverables that require compliance with this paragraph must be signed by the Settling Defendant's Project Coordinator, or other responsible official of Settling Defendant, and must contain the following statement:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

7.6 Approval of Deliverables

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the Decree or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) Resubmissions.** Upon receipt of a notice of disapproval under ¶ 7.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 7.6(a), Settling Defendant shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (5) any combination of the foregoing.
- (c) Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 7.6(a) (Initial Submissions) or ¶ 7.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Decree; and (2) Settling Defendant

shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 7.6(a) or ¶ 7.6(b) does not relieve Settling Defendant of any liability for stipulated penalties under Section [XIII] (Stipulated Penalties) of the Decree.

- (d) If: (1) an initially submitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ 7.6(a)(2); or (2) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

7.7 Supporting Deliverables. Settling Defendant shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. Settling Defendant shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 10 (References)). Settling Defendant shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan (“HASP”).** The HASP describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work. Settling Defendant shall develop the HASP in accordance with EPA’s *Emergency Responder Health and Safety Manual* and Occupational Safety and Health Administration (“OSHA”) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover Remedial Design activities and should be, as appropriate, updated to cover activities during the Remedial Action and updated to cover activities after Remedial Action completion. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.
- (b) **Emergency Response Plan (“ERP”).** The ERP must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
 - (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (“SPCC”) Plan (if applicable), consistent with the regulations under 40 C.F.R. part 112, describing measures to prevent, and contingency plans for, spills and discharges;

- (4) Notification activities in accordance with ¶ 5.4(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under CERCLA § 103 or EPCRA § 304; and
 - (5) A description of all necessary actions to ensure compliance with ¶ 5.4 of the SOW in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Quality Assurance Project Plan (“QAPP”).** The QAPP must include a detailed explanation of Settling Defendant’s quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. Settling Defendant shall develop the QAPP in accordance with EPA Directive CIO 2105.1 (Environmental Information Quality Policy, 2021), the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E-4 (Feb. 2014, and *Guidance for Quality Assurance Project Plans*, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002). Settling Defendant shall collect, produce, and evaluate all environmental information at the Site in accordance with the approved QAPP.
- (d) **Site Wide Monitoring Plan (“SWMP”).** The purpose of the SWMP is to obtain baseline information regarding the extent of contamination in affected media at the Site; to obtain information, through short- and long- term monitoring, about the movement of and changes in contamination throughout the Site, before and during implementation of the Remedial Action; to obtain information regarding contamination levels to determine whether Performance Standards are achieved; and to obtain information to determine whether to perform additional actions, including further Site monitoring. The SWMP must include:
- (1) Description of the environmental media to be monitored;
 - (2) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;
 - (3) Description of how performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;
 - (4) Description of verification sampling procedures;
 - (5) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies;

- (6) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as higher than expected concentrations of the contaminants of concern or groundwater contaminant plume movement);
 - (7) A plan to immediately provide to EPA any unvalidated sampling data from Community Areas as defined in ¶ 7.7(e) affected by the remedy that exceed removal management levels or three times remedial cleanup levels, whichever is lower; and
 - (8) A plan to expedite sampling and analysis in Community Areas as defined in ¶ 7.7(e) affected by the remedy (particularly in situations where EPA determines that unvalidated sampling data indicates substantial exceedances of cleanup standards), including procedures for expedited analysis, validation, and communication of sampling results to affected communities.
- (e) **Community Impact Mitigation Plan (“CIMP”).** The CIMP describes all activities to be performed: (1) to reduce and manage the impacts from remedy implementation (e.g., air emissions, traffic, noise, odor, temporary or permanent relocation) to residential areas, schools, playgrounds, healthcare facilities, or recreational or impacted public areas (“Community Areas”) from and during remedy implementation, (2) to conduct monitoring in Community Areas of impacts from remedy implementation, (3) to expeditiously communicate validated remedy implementation monitoring data, (4) to make adjustments during remedy implementation in order to further reduce and manage impacts from remedy implementation to affected Community Areas, (5) to expeditiously restore community resources damaged during remediation such as roads and culverts, and (6) to mitigate the economic effects that the Remedial Action will have on the community by structuring remediation contracts to allow more local business participation. The CIMP should contain information about impacts to Community Areas that is sufficient to assist EPA’s Project Coordinator in performing the evaluations recommended under the *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (March 2020), pp. 53-56.
- (f) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the Remedial Action. Settling Defendant shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of Performance Standards required to be met to implement the Record of Decision;

- (2) Description of activities to be performed: (i) to provide confidence that Performance Standards will be met; and (ii) to determine whether Performance Standards have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including: (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve Performance Standards; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that Performance Standards are not achieved; and a schedule for implementing these corrective actions.
- (g) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. Settling Defendant shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).

8. SCHEDULES

- 8.1 Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the Remedial Design and Remedial Action Schedules set forth below. Settling Defendant may submit proposed revised Remedial Design Schedules or Remedial Action Schedules for EPA approval. Upon EPA's approval, the revised Remedial Design and/or Remedial Action Schedules supersede the Remedial Design and Remedial Action Schedules set forth below, and any previously-approved Remedial Design and/or Remedial Action Schedules.

8.2 Remedial Design Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
1	TAP	2.3(c)	30 days after EPA request
2	Designate TAP Coordinator	2.3(c)(7)	30 days after EPA request
3	RDWP	4.1	60 days after EPA's Authorization to Proceed regarding Supervising Contractor (¶ 9.c).
4	ICIAP	4.2	60 days after EPA Authorization to Proceed regarding Supervising Contractor (¶ 9.c).
5	Preliminary (30%) Remedial Design	4.4	90 days after EPA approval of Final RDWP
6	Pre-final (90/95%) Remedial Design	4.5	60 days after EPA comments on Preliminary or Remedial Design
7	Final (100%) Remedial Design	4.6	60 days after EPA comments on Pre-final Remedial Design

8.3 Remedial Action Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	Commence to Implement ICIAP	4.2	30 days after EPA Notice of Authorization to Proceed with ICIAP
3	RAWP	5.1	60 days after EPA Notice of Authorization to Proceed with Remedial Action
2	Final Inspection		90 days after Final (100%) Remedial Design
3	Remedial Action Report	5.7(d)	90 days after Final Inspection
4	Monitoring Report	5.8(a)	Monitoring will vary according to whatever is written in the RA Work Plan
5	Work Completion Report	5.10(b)	If this is the Remedial Action Completion Report (RACR), then this completed by the EPA after the Operational and Functional (O&F) determination (inspection after one year of operation) by the EPA.
6	Periodic Review Support Plan	5.9	Five years after Start of Remedial Action Construction

9. STATE PARTICIPATION

- 9.1 Copies.** Settling Defendant shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to Settling Defendant, send a copy of such document to the State.

9.2 Review and Comment. The State will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA notice to proceed under ¶ 3.3 (Procedures for Disapproval/Notice to Proceed);
- (b) Any EPA approval or disapproval under ¶ 7.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (c) Any approval or disapproval of the Construction Phase under ¶ 5.6 (Remedial Action Construction Completion), any disapproval of, or Certification of Remedial Action Completion under ¶ 5.8 (Certification of Remedial Action Completion), and any disapproval of, or Certification of Work Completion under ¶ 5.10 (Certification of Work Completion).

10. REFERENCES

10.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the three EPA web pages listed in ¶ 10.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G90/001 (Apr. 1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).

- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, EPA/540-R-01-007 (June 2001).
- (o) Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002) <https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>.
- (p) Institutional Controls: Third-Party Beneficiary Rights in Proprietary Controls, OECA (Apr. 2004).
- (q) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (r) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (s) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2005), <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (t) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (u) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (v) [Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).
- (w) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (x) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).
- (y) Recommended Evaluation of Institutional Controls: Supplement to the “Comprehensive Five-Year Review Guidance,” OSWER 9355.7-18 (Sep. 2011).

- (z) Plan EJ 2014: Legal Tools, EPA Office of General Counsel (Dec. 2011), <https://www.epa.gov/environmentaljustice/plan-ej-2014-legal-tools>.
- (aa) Construction Specifications Institute's MasterFormat, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (bb) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012)
- (cc) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175446.pdf>.
- (dd) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175449.pdf>.
- (ee) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), https://www.epaosc.org/_HealthSafetyManual/manual-index.htm.
- (ff) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (gg) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).
- (hh) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).
- (ii) Quality Management Systems for Environmental Information and Technology Programs -- Requirements with Guidance for Use, ASQ/ANSI E-4 (February 2014), available at <https://webstore.ansi.org/>.
- (jj) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.
- (kk) Advanced Monitoring Technologies and Approaches to Support Long-Term Stewardship (July 20, 2018), <https://www.epa.gov/enforcement/use-advanced-monitoring-technologies-and-approaches-support-long-term-stewardship>.
- (ll) Superfund Community Involvement Handbook, OLEM 9230.0-51 (March 2020). More information on Superfund community involvement is available on the Agency's Superfund Community Involvement Tools and Resources web page at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources>.

(mm) EPA directive CIO 2105.1 (Environmental Information Quality Policy, 2021), https://www.epa.gov/sites/production/files/2021-04/documents/environmental_information_quality_policy.pdf.

10.2 A more complete list may be found on the following EPA web pages:

- (a) Laws, Policy, and Guidance at <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>;
- (b) Search Superfund Documents at <https://www.epa.gov/superfund/search-superfund-documents>; and
- (c) Test Methods Collections at: <https://www.epa.gov/measurements/collection-methods>.

10.3 For any regulation or guidance referenced in the Decree or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Settling Defendant receive notification from EPA of the modification, amendment, or replacement.